

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6251 of 1998

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR. K.G.BALAKRISHNAN and  
MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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MJ SHAH- DIRECTOR TAPOVAN                      SANSKARPITH VIDYALAYA

Versus

STATE OF GUJARAT

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Appearance:

Ms.V.P.Shah, Senior Advocate for  
MS ROOPAL R PATEL Advocate for the Petitioners

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CORAM : CHIEF JUSTICE MR. K.G.BALAKRISHNAN and  
MR.JUSTICE J.M.PANCHAL

Date of decision: 05/08/98

ORAL JUDGEMENT (Per J.M.Panchal, J)

By means of filing this Public Interest Litigation, the petitioners have challenged the policy decision announced by the State of Gujarat vide notification dated June 9, 1998 with regard to the allotment of the seats in the primary training course to the students who have passed the higher secondary

certificate examination from vocational stream.

1. In order to appreciate controversy raised in the petition, it would be necessary to notice certain provisions of the Bombay Primary Education Act, 1949 and other relevant statutes. It is the declared policy of Government that universal, free and compulsory primary education should be reached by a definite programme of progressive expansion. It is the duty of the Government to secure the development and expansion of primary education. Therefore, to provide for compulsory primary education and to make better provision for the management and control of primary education, the then Bombay Legislative Assembly enacted the Bombay Primary Education Act, 1949. It was adapted and modified by the Gujarat Adaptation Laws (State and concurrent subjects) Order 1960 and has been amended/modified from time to time.

'Approved School' as defined by Section 2 (2) of the said Act means, a primary school maintained by the State Government or by a school board or by an authorised municipality or which is for the time being recognised as such by a school board or by the State Government or by an officer authorised by it in this behalf. District School Board or as the case may be authorised municipality has to maintain adequate staff including primary teachers as provided by Section 20 of the Act and the selection has to be made through Staff Selection Committee as contemplated by Sec. 23 of the Act. Section 63 of the Act confers rule making power on the State Government. What is important to note for the purpose of this petition is that sub-section (2) of Section 63 provides that the State Government may make rules for providing pre-vocational courses as a part of upper primary courses. In exercise of powers conferred by Section 63 of the Act, the Government has made the Bombay Primary Education Rules, 1949. Model conditions of employment of staff in private schools in the State of Gujarat are laid down in Schedule F to the Rules. As per clause 6 of the said schedule, the management has to appoint only trained teachers who have passed the Secondary School Certificate Examination and also the Primary Training Certificate Examination. For special subjects, teachers have to be recruited in accordance with the qualifications laid down by the Government for such teachers. On passing secondary school certificate Examination, a student is entitled to have necessary certificate from the authority.

2. With a view to bringing changes in education a new pattern of education was introduced w.e.f. 1976

known as 10 + 2 + 3. With the introduction of new pattern of education, public level examination is envisaged at the completion of standard 10 known as Secondary School Certificate Examination whereas another examination is contemplated on the completion of Standard 12 known as Higher Secondary Certificate Examination. The course of study upto standard 10 is known as the secondary course. After the introduction of 10 + 2 + 3 pattern of education, a policy for introducing vocational course was adopted by the authorities. Following the said policy an appropriate resolution was passed by the State of Gujarat on May 5, 1982 introducing vocational based courses. By resolution dated July 2, 1987 the respondent revamped the earlier courses and divided the course into four groups i.e. Technical group, Commerce Group, Agricultural Group and Home Science Group. The copy of the said resolution is produced by the petitioner at Annexure 'A' to the petition. After the introduction of the vocational stream, necessary changes were also made in other streams. To provide for recognition of educational institutions established and maintained for conducting courses of instructions leading to grant of certain certificates including primary teachers certificate, the Gujarat State Legislative Assembly has enacted The Gujarat Educational Institutions (Regulations) Act, 1984. As per Section 6 of the said Act, no educational institution is entitled to admit any student in the educational institution except in accordance with the rules made in that behalf. Section 13 of the said Act empowers the State Government to make rules whereas Section 13(2)(h) of the said Act confers power on the State Government to make rules for admission of students in recognised educational institutions under Section 6. In exercise of powers conferred by Section 13 of the Act, the State Government has made rules known as Gujarat Educational Institutions (Pre-Primary and Primary Teachers Training Colleges) Rules, 1984. As per Rule 6 of the Rules, an educational institution can admit students in accordance with the provisions contained in Appendix V.

Appendix V is as under :-

Provisions relating to Admission  
in Education Institution.

1. The minimum qualification for admission for training in the Educational Institution shall be the possession of Secondary School Certificate issued by Gujarat Secondary Education Board.

2. Admission shall be given on the basis of the marks obtained in the Secondary School Certificate Examination.

3. Minimum age of candidate for admission shall be 15 years at the commencement of the academic year and no candidate shall be admitted in an Education Institution if his age exceeds 22 years at such commencement.

Provided that the maximum age limit specified in this clause shall be relaxed by 5 years in the case of a candidate belonging to the Schedule Caste or as the case may be Schedule Tribe.

[4. (1) Out of the total seats available in the first year classes in an institution there shall be reserved -

(i) 7% of the seats for candidates belonging to Scheduled Castes.

(ii) 14% of the seats for candidates belonging to Scheduled Tribes.

(iii) 27% of the seats for candidates belonging to Socially and Educational backward classes, widows and Orphans and,

(iv) 2% of the seats for Economically backward classes whose income does not exceed rupees eleven thousand per annum and live below poverty line and not belonging to any of the class of above category.

(2) An additional 17% and 2% Supernumary seats shall be created for the candidates belonging to the Socially and Educationally Backward Classes and Economically Backward Classes respectively, so that the number of seats for the General category is not decreased.

Such Supernumary seats shall be filled up by only those candidates and shall not be filled up by any other candidates in case of non availability of such candidates.]

5. The procedure to be followed for admitting candidates in an Educational Institution shall be such as may be specified by the Director, as the case may be , authorised officer."

From the provisions contained in appendix - V it

is evident that the minimum qualification for admission for training in the Educational Institution is the possession of Secondary School Certificate issued by Gujarat Secondary Education Board and admission has to be given on the basis of the marks obtained in the Secondary School Certificate Examination. In view of 10 + 2 + 3 pattern of education, and revamping of vocational courses, the need to consider students passing Secondary School Certificate Examination as well as those passing Higher Secondary School Certificate issued by Gujarat Higher Secondary Education Board, for admission for training in the Education Institution became apparent. The State Government has therefore made rules called the Gujarat Educational Institutions (Pre-Primary and Primary Teachers Training Colleges) (Ist Amendment) Rules, 1997. By these rules paras 1,2 and 3 of Appendix - V have been substituted as follows :-

"In the said rules, in appendix-V for paras 1, 2 and 3 the following shall be substituted, namely:-

"1. The minimum qualification for admission for training in the Educational Institution shall be the possession of 'Secondary School Certificate issued by Gujarat Secondary Education Board in case of Pre-Primary Teachers Training and Higher Secondary School Certificate issued by Gujarat Higher Secondary Education Board in case of Primary Teachers Training.

Provide that in case of Primary Teachers Training Course out of total seats, 70% seats shall be allotted to the candidates from General, Commerce, Vocational and other streams and 30% from Science stream of Higher Secondary School.

2. Admission shall be given on the basis of the marks obtained in the Secondary School Certificate Examination in case of Pre-Primary Teachers Training and Higher Secondary school Certificate Examination in case of Primary Teachers Training.

3. Minimum age of candidates for admission to pre-primary Teachers Training shall be 15 years, and minimum age of candidate for admission to Primary Teachers Training shall be 17 years at the commencement of the academic year, and no candidate shall be admitted in an Education Institution if his age exceeds 22 years and 24 years respectively for Pre-primary Teachers Training and Primary Teachers Training at such commencement;

Provided that the upper age limit shall be relaxed by five years in the case of a candidate belonging to Schedule Caste, Schedule Tribe or as the case may be Socially and Educationally Backward Class."

3. According to the petitioners the allotment of the seats in the PTC to the students who have passed the HSC Examination from vocational stream would deteriorate the quality of education to be imparted in the primary schools. The petitioners have pleaded that such allotment of seats is also likely to lead to unequal allotment of seats amongst the students passing the HSC examination from the Science, General and Uttar Buniyadi Stream. What is claimed by the petitioners is that the amended rules would do more harm to the cause of primary education rather than enhancing the cause for the purpose for which the respondent no.1 has thought fit to prescribe the criteria of passing the HSC examination for getting admission in the PTC course. Under the circumstances by filing the present petition, the petitioners have prayed to declare that the provisions contained in the proviso to Para 1 of Appendix V of the Gujarat Education Institutions (Pre-primary and primary teachers training colleges) (First amendment) Rules 1997 is ultravires and unconstitutional. The petitioners have prayed to issue a writ of mandamus forbearing the respondents from implementing the impugned proviso to Para 1 of the amended rules.

2. We have heard the Learned Counsel for the petitioners at length. As admitted by the petitioners themselves what is challenged in the petition is a policy decision of the Government. The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is (1) absolutely capricious and not being informed by any reason whatsoever or (2) can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending article 14 of the Constitution or (3) Such policy offends other constitutional provisions or (4) comes into conflict with any statutory provisions, the court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. Policy decision is in the domain of the Executive authority of the State and the court would not be justified in embarking on the uncharted ocean of public policy and should not question the efficacy or otherwise of such policy so long as the same does not offend any provision of the Statute or the Constitution of India. The power of judicial review of the executive and

legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limits by unwarranted judicial activism.

4. In the light of settled legal position regarding the scope of judicial review we would now examine whether the educational policy framed by the State is absolutely capricious and not being informed by any reason whatsoever so as to warrant interference of the Court in the present petition. From the provisions of the amended rules it is evident that the reasons which prompted the State Government to introduce new qualification for admission for training in the Educational Institutions are new pattern of education and reavmping of streams as well as vocational courses. The policy prescribed that in case of Primary Teachers Training Course, out of total seats, 70% seats will be allotted to the candidates from the General, Commerce, Vocational and other streams is laid down for better prospects of the students studying in PTC so that they can pursue any of the vocational course which may be taught to them for better prospects of their career. The submission that in curriculum prescribed for students studying in primary school no subjects relating to vocational course are included or are being taught and therefore the impugned rules should be struck down has no merits. If the curriculum does not include such subjects it can always be amended and necessary subjects can be introduced for students prosecuting studies in primary schools. Section 38 of Bombay Primary Education Act, 1947 provides that the subject curriculum, books and standards of approved schools shall be such as may from time to time be specified by the State Government. Therefore subjects and curriculum can always be changed from time to time as per the necessity. We do not find that the action of the respondent no.1 in treating those students who pass the higher secondary school certificate examination from the vocational stream as possessing necessary qualification for getting admission for Primary Teachers Training Institute is contrary to any of the provisions of the act or the Rules. It is relevant to note that the State is empowered to frame rules for providing pre-vocational courses as a part of upper primary courses and to achieve this objective, the amended rules have been brought into force. Though the petitioners have averred that inclusion of the students passing from the vocational stream in 70% of seats is discriminatory, the petitioners have failed to substantiate this plea. The Court would

be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters, in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of education institutions and departments controlling them. It will be wholly wrong for the Court to make a pendantic and purely idealistic approach to the problems of this nature, as suggested by the petitioners, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to pragmatic one were to be propounded. It is well settled that in educational matters, it is within jurisdiction of the educational authorities to decide all matters which fall within their jurisdiction and it is not the function of the Courts to substitute their own judgement in place of the judgement of those who have been so empowered by law. Though the petitioners have challenged proviso to Para 1 of Appendix V as amended by the rules as violative of provisions of Article 14 of the Constitution, it can be struck down only if it is found to be arbitrary or unreasonable. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating a statutory provision. An enactment cannot be struck down on the ground that the Court thinks it unjustified. Those who are in charge of academic matters are supposed to know and be aware of the needs of students and what is good and bad for them. The Court cannot sit in judgement over their wisdom. The policy decision of the respondent no.1 is neither irrational nor unconstitutional. The petitioners have also failed to establish that the proviso to Para 1 of Appendix V in the amended rules does more harm to the cause of primary education rather than enhancing the said cause. We do not find anything unreasonable in vocational courses being taught to the students of primary school by one who has passed Higher Secondary Certificate Examination from vocational stream and has also obtained primary teachers certificate under the Act of 1984. On totality of the facts and circumstances of the case, we are of the opinion that the education policy which is adopted by the respondent no.1 is for better prospects of students studying in primary schools and therefore the petitioners are not entitled to claim the reliefs prayed for in the petition. The petition therefore cannot be entertained and is liable to be rejected.

5. For the forgoing reasons the petition fails and



is summarily dismissed.

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